

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MAZEN AL-TAHA**

Claimant

VS.

**STATE OF KANSAS**

Respondent

AND

**STATE SELF-INSURANCE FUND**

Insurance Carrier

Docket No. 270,222

**ORDER**

The self-insured respondent requests review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on July 1, 2002.

**ISSUES**

The Administrative Law Judge (ALJ) determined claimant was acting in the scope of his employment when he was injured in an automobile accident.

The self-insured respondent argues claimant was a volunteer and not an employee when the automobile accident occurred and, accordingly, the claimant's accidental injury did not arise out of and in the course of his employment.

Conversely, claimant argues he was an employee acting in the course of his employment when he was involved in the automobile accident on December 16, 2000.

The issue for Board determination is whether the accident arose out of and in the course of employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

It is undisputed claimant was injured in an automobile accident on December 16, 2000. Claimant was driving a vehicle transporting international students from Emporia State University to Kansas City International Airport so the students could go home at the end of the semester.

Claimant was employed as a graduate assistant and assigned to the Office of International Education. When granted the graduate assistantship, the claimant's job duties were summarized in the following fashion: "Your assignment will be to coordinate SS 150, assist with admissions, recruiting, speaker's bureau, OIE programming, housing confirmation, registration, employment, airport/bus pick-up, and general academic procedures."<sup>1</sup> Claimant noted that he had also transported students to the airport on past occasions.

The Office of International Education would arrange to pick up new international students at airports or bus stations as part of the orientation process when they first arrived at the University. It is undisputed that claimant's job duties included performing this activity.

The Office of International Education would also serve as the clearinghouse to coordinate the travel of the international students when they would need to get to the airport to leave during vacation or semester breaks. James F. Harter, the Assistant Vice-President for International Education, noted that transporting the international students after they initially arrived at the University was then done by volunteers because it was against University policy to use a state vehicle for that purpose. But Mr. Harter agreed that arranging such transportation for the students was a goodwill gesture and in fact was expected by the international students.

Mr. Harter held a meeting attended by claimant and two gentlemen who had previously volunteered to transport students in order to determine who could drive to Kansas City International Airport on December 16, 2000. Because of conflicts the only person available to drive that date was the claimant.

Mr. Harter insisted he was simply looking for a volunteer driver. Claimant believed the circumstances of the meeting, especially the fact that he was the only one available to take the students to the airport that day, indicated it was part of his job duties and he was told to make the trip. Mr. Harter agreed that perhaps it would be reasonable for claimant to think that but he concluded it was not a part of claimant's job duties.<sup>2</sup> Claimant also noted that one of the other individuals who attended the meeting, Garen Forsythe, had told

---

<sup>1</sup> Swift Depo., Ex. 1.

<sup>2</sup> Harter Depo. at 43.

claimant he was surprised Mr. Harter was contending claimant was a volunteer because he didn't think it had sounded like claimant had volunteered.

The vehicle claimant was driving on December 16, 2000, had been rented by the secretary in the Office of International Education. Although she used her personal credit card to secure payment, the rental form identified "Emporia State-International Office" and claimant as the customer.<sup>3</sup> The secretary noted that Mr. Harter had asked her to contact the rental agency to obtain a vehicle.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>4</sup>

An injury arises 'out of' employment if it arises out of the nature, conditions, obligations, and incidents of the employment.<sup>5</sup> Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.<sup>6</sup>

The self-insured respondent argues claimant was simply a volunteer when driving the students to the airport on the date of the accident and was not performing a job duty on that occasion. The Board disagrees.

At the meeting prior to December 16, 2000, it was determined that claimant was the only person available to drive the international students to the airport. His supervisor indicated he should take the students to the airport. Claimant believed it was his duty to perform that task. An employer's order to perform a task does not necessarily need to take the form of a command, if the circumstance of the employer's suggestion or the employee's impression of what is expected of him are sufficient to motivate the employee to undertake the activity.

In this case, claimant believed his supervisor had tasked him to drive the students to the airport. Claimant's supervisor agreed that perhaps it was reasonable for claimant to have that belief. Claimant's supervisor then requested that his secretary arrange for rental of the vehicle used to transport the students. The Board adopts the ALJ's finding claimant was acting within the scope of his employment.

---

<sup>3</sup> Al-Taha Depo., Cl. Ex. 1.

<sup>4</sup> See K.S.A. 44-501 and K.S.A. 44-508(g).

<sup>5</sup> *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766,771, 955 P.2d 1315 (1997).

<sup>6</sup> *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, rev. denied 238 Kan. 878 (1985).

In addition, it is generally held that an activity undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment.<sup>7</sup> The transportation of the international students to the airport clearly benefitted the respondent.

Lastly, if, while in the service of the employer, an accident occurs by reason of a risk inherent in the use of a public road the resultant injury is considered compensable.<sup>8</sup> Because claimant was acting in the course of his employment transporting the international students to the airport, the injuries he suffered in the automobile accident that occurred during the trip arose out of his employment.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 1, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2002.

\_\_\_\_\_  
BOARD MEMBER

c: James Wright, Attorney for Claimant  
Marcia Yates, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation

---

<sup>7</sup> 2 *Larson's Workers' Compensation Law*, Ch. 27.

<sup>8</sup> *Newman v. Bennett*, 212 Kan. 562, 512 P. 2d 497 (1973).